

Title 1 GENERAL PROVISIONS

Chapter 1.1 CODE ADOPTION

1.1.1 Adoption.

There is adopted the “Kittery Town Code,” as duly enacted and ordained by the Kittery Town Council on June 28, 2010. This Code is to be liberally construed so as to give it effect consistent with the ordinary and reasonable meaning of its provisions and with the provisions of any general or special laws then in effect adopted by the State of Maine. No provision of this Code is to be construed to limit the powers and duties of Municipal Officers, Boards and Committees imposed upon them by applicable provisions of the general or special laws of the State of Maine. Unless the wording or context clearly dictates a different result, the provisions of any part of this Code so far as it is the same as provisions of an Ordinance or Code heretofore in force, is to be construed as a continuation thereof and not as a change thereof.

1.1.2 Title-Citation-Reference.

This Code is known as the “Kittery Town Code” and it is sufficient to refer to said Code as the “Kittery Town Code” in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It is sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part or portion thereof as an addition to, amendment to, correction or repeal of the “Kittery Town Code.” References may be made to the titles, chapters, sections and subsections of the “Kittery Town Code” and such references apply to those titles, chapters, sections or subsections as they appear in the Code.

1.1.3 Reference Applies to All Amendments.

Whenever a reference is made to this Code as the “Kittery Town Code” or to any portion thereof or to any ordinance of the Town of Kittery, Maine, codified herein, the reference applies to all amendments, corrections and additions heretofore, now or hereafter made.

1.1.4 Title, Chapter, and Section Headings.

Title, chapter and section headings contained herein are not deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section hereof.

1.1.5 Reference to Specific Ordinances.

The provisions of this Code do not in any manner affect matters of record which refer to, or are otherwise connected with ordinances which are therein specifically designated by number or otherwise and which are included within the Code, but such reference is construed to apply to the corresponding provisions contained within this Code.

1.1.6 Effect of Code on Past Actions and Obligations.

The adoption of this Code does not affect prosecutions for ordinance violations committed prior to the effective date of this Code, does not waive any fee or penalty due and unpaid on the effective date of this Code, and does not affect the validity of any bond or cash deposit posted, filed or deposited pursuant to the requirements of any ordinance.

1.1.7 Constitutionality.

If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional, such decision does not affect the validity of the remaining portion of this Code.

1.1.8 References to Prior Code.

References in Town forms, documents and regulations to the chapters and sections of the former Town Code are to be construed to apply to the corresponding provisions contained within this Code.

Chapter 1.2 GENERAL PROVISIONS

1.2.1 How Code Designated and Cited.

The ordinances embraced in the following chapters and sections constitute and are designated the “Kittery Town Code” and may be so cited.

1.2.2 Rules of Construction and Definitions.

In the construction of this Code, and of all ordinances, the rules and definitions set out in this section must be observed, unless such construction would be inconsistent with the manifest intent of the Town Council. The rules of construction and definitions set out herein must not be applied to any section of this Code which contains any express provision excluding such construction, or where the subject matter of context of such section may be repugnant thereto.

All general provisions, terms, phrases and expressions contained in this Code must be liberally construed in order that the true intent and meaning of the Town Council may be fully carried out.

In the interpretation and application of any provisions of this Code, they must be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision of the Code imposes greater restrictions upon the subject matter than the general provision imposed by the Code, the provision imposing the greater restriction or regulation controls.

Except where specifically defined in this chapter, or in particular titles separately, all words used in this Code carry their customary dictionary meanings. All definitions are understood to be consistent with State and Federal law as may be amended from time to time and where any discrepancy may arise, the State or Federal usage prevails. Words used in the present tense include the future and the plural includes the singular; and, gender-specific words (e.g., she, he, his, hers) include the opposite sex equivalent.

1.2.2.1 Rules.

Compact or Built Up Section. The “compact or built up section” of the Town means a section of the highway where structures are nearer than two hundred (200) feet apart for a distance of one-quarter of a mile.

Computation of Time. Whenever a notice is required to be given or an act to be done a certain length of time before any proceeding is held, the day on which such notice is given, or such act is done, is not counted in computing the time, but the day on which such proceeding is to be held is counted.

Corporate or Town Limits. The term “corporate limits” or “Town limits” means the legal boundaries of the Town of Kittery, Maine.

County. The words “the county” or “this county” means the county of York in the state of Maine.

Delegation of Authority. Whenever a provision appears requiring the head of a department or some other Town officer to do some act or perform some duty, it is to be construed to authorize the head of the department or other officer to designate, delegate and authorize subordinates to perform the required act or perform the duty unless the terms of the provision or section specify otherwise.

Joint Authority. Words giving authority to three or more persons authorize a majority to act, when the enactment does not otherwise determine.

Nontechnical and Technical Words. Words and phrases are construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law are construed and understood according to such meaning.

Number. Words of the singular number include the plural; and words of the plural number include the singular.

Officials, Boards, Commissions. Whenever reference is made to officials, boards, commissions by title only, i.e., “Town Council,” “Town Clerk,” “Town Manager,” etc., they are deemed to refer to the officials, boards and commissions of the Town of Kittery.

Owner, applied to a building or land, means and includes any part owner, joint owner, tenant in common, joint tenant, of the whole or of a part of such building or land.

Preceding or Following. The words “preceding” and “following” mean next before and next after, respectively.

Must; May. “Must” indicates a mandatory duty, action or requirement. “May” indicates authorization or permission to act.

State. The words “the state” or “this state” are construed to mean the state of Maine.

Town Council, Council. Whenever the words “Council” or “Town Council” are used, they are construed to mean the Town Council of the Town of Kittery, Maine.

Written or in writing are construed to include any representation of words, letters or figures, whether by printing or otherwise.

1.2.2.2 Definitions.

Except where specifically defined in this Town Code, all words used in this title carry their customary dictionary meanings. Words used in the present tense include the future and the plural includes the singular; the word “lot” includes the word “plot”; the word “building” includes the word “structure”; the words “shall” or “must” are always mandatory; “occupied” or “used” are considered as though followed by the words “or intended, arranged or designed to be used or occupied”; and, gender-specific words (e.g., she, he, his, hers) include the opposite sex equivalent.

Aggrieved party means an owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this title; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

Banner means any sign of lightweight fabric or similar material that is mounted for display at one or more edges.

Building means any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of persons, animals, or property. Each portion of a building, separated from other portions by a fire wall, is considered as a separate structure.

Business means, for the purposes of the sign regulations, any corporation, trust, partnership, or other verifiable legal entity with the object of gain, benefit, or advantage.

Business facility means, for the purposes of the sign regulations, a workplace of a business other than an employee’s or employer’s personal residence.

Certificate of occupancy means a permit issued by the Code enforcement officer that authorizes the recipient to make use of property in accordance with the requirements of this title and applicable state and federal requirements.

Clerk means the Kittery Town clerk.

Code enforcement officer (CEO) means the person duly authorized by the Town to carry out the duties as prescribed herein and in the Town administrative Code.

Community means the Town of Kittery and its people.

Comprehensive plan means any part or element of the plan or policy for the development of the Town as defined in 30-A M.R.S. §4301, as issued in the Kittery comprehensive plan, dated July 1989 and approved by the Town Council on September 25, 1989, or subsequent revisions or additions thereto (e.g., comprehensive harbor plan).

Council means the Kittery Town Council.

Day means a calendar day unless otherwise indicated.

Developer means any person, firm, corporation, or other legal entity that makes application for any type of development within the Town.

Development means a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

Emergency operations means operations conducted by or on behalf of the municipality for the public health, safety, or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property, and livestock from the threat of destruction or injury.

Gambling means that process in which a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his/her control or influence, upon an agreement or understanding that he, she, or someone else would receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including, but not limited to, contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including, but not limited to, contracts of indemnity or guaranty and life, health, or accident insurance.

Gambling casino means a building, structure, or other facility used to allow, conduct, hold, maintain, or operate a game of chance, game of skill, electronic video machine, roulette, high-stakes beano or bingo, slot machines, or any other type of gambling activity. A gambling casino is not to be construed to include a building structure or other facility when used incidentally by any bona fide nonprofit charitable, educational, political, civic, recreational, paternal, patriotic, or religious organizations, or a volunteer fire department or other public safety nonprofit organization when used for the conduct of any beano, bingo, raffles, games of chance, or other activities specifically permitted by Maine State Statute provided that such nonprofit organizations do not exist primarily to operate such activities and that all requirements of state statute including all requirements for licensing by the Chief of the Maine State Police are strictly met.

Gambling device means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition.

Game of chance means any game, contest, scheme, or device in which: (1) a person stakes or risks something of value for the opportunity to win something of value; (2) the rules of operation or play require an event, the result of which is determined by chance, outside the control of the contestant or participant; and (3) chance enters as an element that influences the outcome in a manner that cannot be eliminated through the application of skill.

As used in this definition, “an event the result of which is determined by chance” includes, but is not limited to, a shuffle of a deck or decks of cards, a roll of a die or dice, or a random drawing

or generation of an object or objects that may include, but are not limited to, a card or cards, a die or dice, a number or numbers, or simulations of any of these. A shuffle of a deck or decks of cards, a roll of a die or dice, a random drawing or generation of an object or objects, or some other event the result of which is determined by chance that is employed to determine impartially the initial order of play in a game, contest, scheme, or device, does not alone make a game, contest, scheme, or device a game of chance.

Game of skill means any game, contest, scheme, or device in which a person stakes or risks something of value for the opportunity to win something of value and that is not a game of chance.

Hazardous waste means, as defined in 38 M.R.S., §1319-0, a waste substance or material in any physical state, designated as hazardous by the Board of Environmental Protection under 38 M.R.S. §1303-A.

Legislative body means Kittery Town Council.

License means that license duly issued by the Council.

Municipality means Town of Kittery, Maine.

Municipal Officer – A member of the Town Council as defined in the 30-A M.R.S. §2001(10).

Municipal Official – Any elected or appointed member of the municipal government, as defined in 30-A M.R.S. §2001(11).

Navigable waters means the “waters of the United States including territorial seas” as defined in the Federal Clean Water Act and 33 CFR Part 328, as amended

Month means a calendar month.

Nuisance includes those public and common nuisances as defined by state statute 17 M.R.S. § 2802 et seq.

Oath means and includes an affirmation, when affirmation is allowed. Affirmation is allowed when a person required to be sworn is conscientiously scrupulous of taking an oath.

Open space means and includes all dedicated portions of a parcel that has vegetated surfaces or is in an undisturbed natural state. “Open space” does not include areas occupied by a building or a parking area. Vegetated surfaces of outdoor commercial recreational uses may be used to satisfy up to fifty percent (50%) of the required open space on any parcel.

Person means an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, firm or, in the case of a corporation or association, any official thereof, or other legal entity.

Personal property means and includes every species of property except real property, as described in this section.

Practicable means available and feasible, considering cost, existing technology, and logistics based on overall project purposes.

Property means and includes real and personal property.

Public facility means any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

Real property means and includes lands, tenements and hereditaments.

Road means a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles.

Roulette means a game of chance in which players bet on the compartment of a revolving wheel into which a small ball comes to rest.

Sidewalk means any portion of a street between the curblin and the adjacent property line, intended for the use of pedestrians, excluding parkways.

Sign means any structure or part of the structure attached thereto or painted or represented thereon, which displays or includes any letter, word, model, banner, flag, pennant, insignia, trade name, trademark, logo, device, or representation used as, or which is in the nature of any announcement of the purpose of a business, entity or person, direction or advertisement. The term sign does not include a flag.

Sign area means the enclosed space within a geometric figure which contains the advertising message, illustration, insignia, or display, together with any frame, color, or other material which comprises the display and is used to differentiate or draw attention to the sign and away from background. Each face of a sign is considered to be a separate sign for area computations, but supporting brackets and posts are not so included.

Sign, Changeable Message. “Changeable message sign” means any sign or portion thereof designed to allow characters, letters, and numbers on the face of the sign to be changed or rearranged.

Sign, Freestanding. “Freestanding sign” means any sign supported by a structure or supports that are permanently anchored in the ground and that is independent from any building.

Sign, Real Estate. “Real estate sign” means any sign advertising real estate for sale, lease, or rent.

Sign, Temporary. “Temporary sign” means a sign that is intended to remain where it is erected or placed for a period of time not to exceed twenty-one (21) days in any calendar quarter.

Sign, Trailer. A “trailer sign” means a portable sign mounted on a chassis and wheels or supported by legs.

Slot machine means any machine which operates by inserting a coin, token, or similar object, setting the internal mechanism of the machine in motion, and by the application of the element of chance may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tickets, or something of value.

Signature or subscription means and includes a mark when the person cannot write.

Something of value means: (1) any money or property; (2) any token, object, or article exchangeable for money, property, amusement, or entertainment; or (3) any form of credit or promise directly or indirectly contemplating transfer of money or property, or of any interest therein, or involving extension of a service, entertainment, or a privilege of playing at a game or scheme without charge.

Special exception means a use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning districts as special exceptions, if specific provision for such special exceptions is made in Chapter 16.3.

Street means a way established or maintained under public authority, or a minimum forty (40) foot wide private way constructed to Town standards as contained in Chapter 16.8, approved by the planning board and plotted, dedicated and recorded, or a way shown on a plan of a subdivision duly approved by the planning board. Street is construed to embrace streets, avenues, boulevards, roads, alleys, lanes, viaducts and all other public ways in the Town, and includes all areas thereof embraced between the property lines and dedicated to the public use.

Tenant or occupant. The words “tenant” or “occupant,” applied to a building or land, mean and include any person holding a written or oral lease or who occupies the whole or a part of such buildings or land, either alone or with others.

Subsurface sewage disposal system means a collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term does not include any wastewater discharge system licensed under 38 M.R.S. §414, any surface wastewater disposal system licensed under 38 M.R.S. §413.1A, or any public sewer. The term does not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 M.R.S. Chapter 13, Subchapter 1.

Town means the Town of Kittery, Maine.

Waste means any unwanted or discarded substance or material, whether or not such substance or material has any future use and includes any substance or material that is spilled, leaked, pumped, poured, emitted, disposed of, emptied, or dumped onto the land or into the water.

Wharf means a structure on the shore, parallel to the shoreline of navigable waters, alongside of which vessels can be brought for loading or unloading.

Year means a calendar year, unless otherwise expressed.

1.2.2.3 Statutes, Regulations, Acronyms, Abbreviations and Technical References.

1.2.2.3.1 Statutes and Regulations Incorporated Into This Code by Reference.

RESERVED

1.2.2.3.2 Acronyms & Abbreviations Used In This Code.

RESERVED

1.2.2.3.3 Technical Sources Incorporated Into This Code By Reference.

RESERVED

1.2.3 Catchlines of Sections.

The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and are not deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, are they to be so deemed when any of such sections, including the catchlines, are amended or re-enacted.

1.2.4 Amendments to Code.

All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code must be numbered in accordance with the numbering system of this Code and printed for inclusion herein, or in the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby and the subsequent ordinances as numbered and printed or omitted, in the case of repeal, is prima facie evidence of such subsequent ordinances until such time as this Code and subsequent ordinances numbered or omitted are re-adopted as a new Code by the Town Council.

1.2.5 Unauthorized Alteration or Tampering with Code.

It is unlawful for any person in the Town to change or amend, by additions or deletions, any part or portions of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the Town to be misrepresented thereby.

1.2.6 Effect of Repeal of Ordinances.

When any ordinance repealing a former ordinance, clause or provision is itself repealed, such repeal may not be construed to revive such former ordinance, clause or provision unless it is therein so expressly provided.

The repeal of an ordinance does not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed or cause of action arising under the ordinance repealed.

1.2.7 Severability of Parts of Code.

The sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code is declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability does not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

Chapter 1.3 ENFORCEMENT, PENALTY, NUISANCE and FEES

1.3.1 General Enforcement.

Any person who violates any specific provision of this Code, wherein a violation penalty provision is made in the title addressing such, must be penalized as specified in said title. Each day any such violation of any provision of this Code continues constitutes a separate offense. All fines collected hereunder accrue to the benefit of the Town.

1.3.2 General Penalty for Violation of Code - Continuing Violations.

Whenever in this Code or in any ordinance of the Town any act is prohibited or is made or declared to be unlawful or an offense, or a civil violation, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, or a civil violation or an offense, where no specific penalty is provided therefor, the violation of any such provision of this Code or any ordinance must be punished by a fine of not more than five hundred dollars (\$500.00). Each day any violation of any provisions of this Code or of any ordinance continues constitutes a separate offense. All fines collected hereunder accrue to the benefit of the Town.

1.3.3 Nuisances Declared.

Any violation of this Code is deemed to be a nuisance.

1.3.4 Fee Schedule.

Whenever any fee is established for municipal permitting, licensing, services, application, appeal , or the like, in the title addressing such, a corresponding fee schedule must be established by resolution of the Town Council and appended to this Code.